

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

VICTOR ROBERT BROWN,

Plaintiff,

v.

GED/HSED TESTING SERVICE,

Defendant.

OPINION AND ORDER

14-cv-51-wmc

Plaintiff Victor Robert Brown is an inmate incarcerated by the Wisconsin Department of Corrections at the Green Bay Correctional Institution. Plaintiff filed this proposed action pursuant to 42 U.S.C. § 1983, regarding his participation in a special education program operated by the defendant GED/HSED Testing Service. He has been found eligible to proceed *in forma pauperis* and he has made an initial, partial payment of the filing fee in this case as required by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b).

Because plaintiff is incarcerated, the court is also required by the PLRA to screen the proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, reviewing them under “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny leave to proceed further and will dismiss this case for reasons set forth below.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

Brown is a 21-year-old inmate enrolled in a special education program offered at the Green Bay Correctional Institution (“GBCI”). Defendant GED/HSED Testing Service is a joint venture by a private foundation (the American Council on Education) and a private learning company (Pearson) based in Washington, D.C., which offers testing for a GED (general educational development) or HSED (high school equivalency diploma). *See* GED Testing Service at <http://www.gedtestingservice.com> (last visited May 29, 2014).

Brown contends that he “passed” tests for reading and science, but that defendant GED/HSED Testing Service has dismissed or disregarded his scores. As a result, Brown was told that he must take the reading and science tests again. Brown maintains that GED/HSED Testing Service has violated his rights by requiring him to retake those tests. Brown seeks a court order directing GED/HSED Testing Service to reinstate his test scores.

OPINION

Brown seeks relief pursuant to 42 U.S.C. § 1983, which provides a private right of action for damages to individuals who are deprived of “any rights, privileges, or immunities” protected by the Constitution or federal law by any person acting under the color of state law. In order to find a defendant liable under § 1983, a plaintiff must

establish that: (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989).

Brown notes that prison officials have “no control of the situation” outlined in his complaint. For this reason, he did not bother to pursue the formal grievance process available at GBCI.¹ Unfortunately for Brown, this allegation amounts to an admission that his federal claim is meritless.

As a private entity, GED/HSED Testing Service cannot be held liable under § 1983 absent allegations of a conspiracy with a state actor to violate the constitutional rights of another. *See, e.g., Maniscalco v. Simon*, 712 F.3d 1139, 1145 (7th Cir. 2013); *Lewis v. Mills*, 677 F.3d 324, 333 (7th Cir. 2012). A § 1983 suit against only private actors does not raise a substantial federal question. *See Piscopo v State Farm Ins.*, 527 F. App’x 552, 554 (7th Cir. 2013). Therefore, this lawsuit must be dismissed for lack of subject-matter jurisdiction.

Assuming that GED/HSED Testing Service *could* be considered a state actor, Brown still cannot prevail because he does not demonstrate that he was deprived of a constitutional right. There is no free-standing constitutional right to educational or

¹ Brown’s failure to pursue the grievance process would appear on its face to violate the PLRA, which states that “[n]o action shall be brought” with respect to prison conditions under § 1983 or any other federal law by a prisoner confined in any jail, prison or other correctional facility “until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Because the complaint plainly fails to state a claim, however, the court does not address the issue of exhaustion.

rehabilitative programs in prison. *See Zimmerman v. Tribble*, 226 F.3d 568, 571 (7th Cir. 2000); *see also Garza v. Miller*, 688 F.2d 480, 486 (7th Cir. 1982) (“There is no constitutional mandate to provide educational, rehabilitative, or vocational programs, in the absence of conditions that give rise to a violation of the Eighth Amendment.”). Accordingly, the complaint must again be dismissed for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983.

ORDER

IT IS ORDERED that:

1. Plaintiff Victor Robert Brown’s request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983.
2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g). (barring a prisoner with three or more “strikes” or dismissals for a filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 20th day of January, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge